

**EXHIBIT F**

(ENDORSED)  
**FILED**  
SAN MATEO COUNTY

OCT 18 2006

Clerk of the Superior Court  
By GRACE LACEY  
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

In re:	)	Case No. SC-31800B
	)	HC-1811
LA MERLE R. JOHNSON	)	
On Habeas Corpus.	)	ORDER OF DENIAL
	)	
	)	

The Court has received and reviewed the Petition for Writ of Habeas Corpus filed by Petitioner, La Merle R. Johnson, on August 22, 2006. For the following reasons his writ petition is denied.

BACKGROUND

The following facts are taken from the Unpublished Opinion of the Court of Appeal for the First Appellate District affirming Petitioner's conviction, filed in this action on August 8, 1997. On the afternoon of July 6, 1993, Petitioner contacted co-defendant Ardie James Moreland ("Moreland"), arranged a meeting, and told Moreland to bring guns.

Petitioner, Moreland, and Lashon Brown ("Brown") drove to a restaurant and discussed a plan to rob Aasa Knowles ("Knowles") on the theory that her boyfriend, Ellis Foots

1 ("Foots"), a drug dealer, would keep some of his cash at her  
2 apartment. The three drove to Knowles' apartment, parked  
3 nearby, and waited. When Foots arrived at Knowles apartment  
4 around 7 p.m., the three decided to rob him as well.

5 Petitioner and Moreland determined that they should take  
6 Foots to various places where he kept cash and that they needed  
7 additional help. Petitioner called, picked up, and returned  
8 with co-defendant Taryn Washington ("Washington") joining  
9 Moreland and a man known as Mike or "Pookie." Petitioner  
10 proposed that they approach Foots, posing as police officers,  
11 and "arrest" him.

12 At about 9:30 p.m., as Foots, Knowles, and a man named  
13 Thomas left Knowles's apartment, two cars approached them and  
14 disgorged armed men. Knowles fled and called police. Foots  
15 started running and threw a bag of cocaine over a fence.  
16 Yelling that they were police officers, Petitioner and Moreland  
17 ordered Foot to lie down on the ground. When Foots complied,  
18 Petitioner held a gun on Foots while Moreland restrained Foots  
19 using handcuffs Petitioner had given him. Moreland put Foots in  
20 the back of one of the cars, and Petitioner told Moreland to  
21 "Get him out of there, away from the scene." Moreland and  
22 Washington took Foots to the apartment of co-defendant Marion  
23 Bonds ("Bonds") in Oakland.

24 Back in Daly City, a police officer responding to a call  
25 about the incident saw defendant walking away from the scene  
26 wearing clothing that matched the description of a possible  
27 suspect. When the officer asked defendant to stop, Defendant  
28 became verbally abusive. Other officers arrived and arrested

1 defendant for obstructing and resisting a police officer (PC §  
2 148). Petitioner was taken to Redwood City Jail and released  
3 around 2:00 a.m. the next morning.

4 Meanwhile at the Bond apartment in Oakland, Moreland and  
5 Washington had taken Foot's wallet, gold chain, cellular phone,  
6 and keys, used duct tape to blindfold Fouts, removed the  
7 handcuffs and bound Fouts' hands and feet with ropes. When  
8 Fouts tried to loosen the ropes, one of the men shot him with a  
9 stun gun and replaced the handcuffs. Moreland became nervous  
10 when Petitioner did not page him as promised, made a plan to  
11 kill Fouts, drove into the Oakland hills to find a place to  
12 dispose of the body, returned, and decided to kill Fouts if  
13 they did not hear from Petitioner within the hour.

14 Petitioner arrived at the Bond apartment in Oakland about  
15 4:30 a.m. Petitioner and Moreland discussed how to get Fouts'  
16 money and asked Fouts how much his people would pay "for his  
17 safety." When Fouts told them he had \$8,000 in his house,  
18 Petitioner drove to the house, but upon seeing Fouts'  
19 "soldiers" there, returned without having gone inside.

20 Petitioner and Moreland decided to hold Fouts for ransom,  
21 had Fouts call his friend, Louis Aterberry ("Aterberry") to  
22 raise ransom money, and told Fouts they would kill him if their  
23 ransom demand was not met.

24 Petitioner and Moreland decided that since Petitioner  
25 resembled Fouts, they could use Fouts' credit cards to get cash  
26 and make purchases. They obtained the "PIN" numbers, credit  
27 limits, and other information from Fouts, flew to Los Angeles,  
28 and used Fouts' cards to obtain cash, jewelry, clothing, and

1 other items. The next morning, while Petitioner was loading  
2 the purchases into a rented van, Moreland was arrested trying  
3 to use one of Foots' credit cards.

4 Petitioner returned to Bonds' apartment. Washington made  
5 the telephone calls to arrange the ransom and Petitioner and  
6 Bonds told Washington what to say. On the evening of July 8,  
7 Petitioner and Bonds went to pick up the ransom, Petitioner  
8 retrieved the backpack containing the money, and then returned  
9 to the apartment to count the money.

10 While in custody in Los Angeles, Moreland disclosed the  
11 location of the Bond apartment. A tactical team forced the  
12 apartment door, found ransom money strewn about; found Foots,  
13 still handcuffed, bound, and blindfolded with duct tape; found  
14 loaded semiautomatic handguns; and found Petitioner, Bonds and  
15 Washington trying to hide in a bedroom closet. Foots was held  
16 captive, bound and blindfolded from July 6, 1993 to July 8,  
17 1993.

18 Prior to Trial, on December 23, 1994, the People brought a  
19 motion to deem Petitioner's plea agreement breached. The  
20 People's motion and supporting declarations establish that  
21 Petitioner entered into a plea agreement whereby Petitioner  
22 would be permitted to plead to charges carrying a maximum  
23 possible punishment of 17 years, eight months in prison, and in  
24 exchange, Petitioner agreed to testify truthfully in the future  
25 trials of People v. Porterfield and Knight.

26 In the motion to deem Petitioner's plea agreement  
27 breached, the People asserted that at the Porterfield trial,  
28 Petitioner changed his testimony mid-trial, stating that his

1 previous testimony was told to him by the District Attorney's  
2 investigator and was false. Petitioner subsequently admitted  
3 under oath that the story about false or planted testimony was  
4 a lie. The Porterfield trial did not result in a conviction.  
5 The court granted the People's motion and Petitioner's plea  
6 agreement became null and void.

7 A jury found Petitioner guilty of kidnapping for ransom,  
8 second degree robbery, and assault with a firearm, and found  
9 true enhancements for personal use of a firearm in connection  
10 with the kidnapping and assault charges. On January 19, 1996,  
11 Petitioner was sentenced to life plus 11 years in prison. The  
12 Court of Appeal affirmed Petitioner's conviction on August 8,  
13 1997.

14 In the instant petition, Petitioner asserts (1) That it is  
15 unconstitutional to deny parole based on facts that can never be  
16 changed; (2) That Petitioner was told by several sources that he  
17 would not be receiving a parole date at his initial hearing  
18 because, contrary to the Penal Code § 3041(d) requirement that a  
19 release date be set, the Board had an unspoken/underground policy  
20 that inmates do not receive parole grants at their initial  
21 hearings; (3) That the San Mateo District Attorney has a conflict  
22 of interest when making parole suitability recommendations  
23 because a prior Assistant District Attorney had threatened to  
24 "fry Petitioner's ass" and revoke Petitioner's plea agreement if  
25 the Assistant District Attorney failed to get a conviction based  
26 in part on Petitioner's testimony in People v. Porterfield; and  
27 (4) that the Parole Board was not justified in recommending that  
28 petitioner (a) get self-help (b) stay discipline free, and (c)

1 learn a trade or in basing the decision to deny parole on the  
2 cruel manner of the offense or Petitioner's perceived lack of  
3 remorse.

4  
5 THE DECISION OF THE BOARD OF PRISON TERMS TO DENY PETITIONER  
6 A PAROLE RELEASE DATE WAS PROPER.

7  
8 A. Habeas Corpus Is An Appropriate Means of Challenging the  
9 Denial of Parole.

10 A petition for writ of habeas corpus is proper to  
11 challenge a denial of parole by the Board of Prison Terms. (In  
12 re Sena (2001) 94 Cal.App.4th 836, 840.)

13 Penal Code section 3040 gives the Board the power to  
14 allow prisoners sentenced to indeterminate terms to go  
15 on parole outside the prison walls and enclosures. The  
16 Legislature has specified that one year prior to the  
17 inmate's minimum eligible release date, a panel of at  
18 least two commissioners of the Board shall meet with  
19 the inmate and shall normally set a parole release  
20 date. (Pen. Code, § 3041, subd. (a).) However, the  
21 panel or the Board need not set a release date if "it  
22 determines that the gravity of the current convicted  
23 offense or offenses, or the timing and gravity of  
24 current or past convicted offense or offenses, is such  
25 that consideration of the public safety requires a more  
26 lengthy period of incarceration for this individual,  
27 and that a parole date, therefore, cannot be fixed at  
28 this meeting." (Pen. Code, § 3041, subd. (b).)

(In Re Morral (2002) 102 Cal.App.4<sup>th</sup> 280, 289, see also In Re  
Dannenberg (2005) 34 Cal.4<sup>th</sup> 1061, 1079.)

23 B. Criteria For Granting or Denial Of Parole And Standard of  
24 Review.

25 "The factor statutorily required to be considered and the  
26 overarching consideration is 'public safety.' As stated in  
27 subdivision (b) of Penal Code section 3041, the Board 'shall  
28 set a release date unless it determines that the gravity of the

1 current convicted offense or offenses, or the timing and  
2 gravity or past convicted offense or offenses, is such that  
3 *consideration of public safety* requires a more lengthy period  
4 of incarceration for this individual." (*In re George Scott*  
5 (2005) 133 Cal.App.4<sup>th</sup> 573, 591 [italics added by court].) Title  
6 15 of the California Code of Regulations § 2402 provides:  
7 "...regardless of the length of time served, a life prisoner  
8 shall be found unsuitable for and denied parole if in the  
9 judgment of the panel, the prisoner will pose an unreasonable  
10 risk of danger to society if released from prison." (*In re*  
11 *George Scott* (2005) 133 Cal.App.4<sup>th</sup> 573, 591 [quoting 15 Cal.  
12 Code of Reg. § 2402].)

13 The standard of review for a Denial of Parole following a  
14 parole hearing was established by the California Supreme Court  
15 as follows: "Accordingly, we conclude that the judicial branch  
16 is authorized to review the factual basis of a declaration of  
17 the Board denying parole in order to ensure that the decision  
18 comports with the requirements of due process of law, but that  
19 in conducting such a review, the court may inquire only whether  
20 some evidence in the record before the Board supports the  
21 decision to deny parole, based on the factors specifically  
22 specified by statute and regulation." (*In re Rosenkrantz* (2002)  
23 29 Cal.4<sup>th</sup> 616, 658.)

24 C. The Board's Reliance On Petitioner's Callous Disregard For  
25 The Victim When The Crime Was Committed, Plus His Current  
26 Lack Of Sincerity and Remorse, Plus The Incomplete Nature of  
27 His Work Plans Constitute Some Evidence Supporting The  
28 Finding that Petitioner Posed A Risk to Public Safety.



1       Petitioner quotes Penal Code § 3041(b) for the proposition  
2       that the Parole Board shall set a release date unless it  
3       determines that the gravity of the current convicted offense or  
4       past convicted offenses is such that consideration of the  
5       public safety requires a more lengthy period of incarceration.  
6       However, while this section mandates that a date be set when  
7       there is no perceived risk to public safety, it also precludes  
8       the setting of a release date when release is perceived to  
9       threaten public safety. '[T]he gravity of the commitment  
10      offense or offenses alone may be a sufficient basis for denying  
11      a parole application, so long as the Board does not fail to  
12      consider other relevant factors.' (*In re Ramirez* (2001) 94  
13      Cal.App.4th 549, 569 overruled on other grounds in *In re*  
14      *Dannenberg* (2005) 34 Cal.4th 1061, 1100; citing *In Re Seabock*  
15      (1983) 140 Cal.App.3d 29, 37-38.)

16      In *In re Dannenberg* (2005) 34 Cal.4<sup>th</sup> 1061, 1071, the  
17      California Supreme Court held: "Accordingly, we conclude that  
18      the Board, exercising its traditional broad discretion, may  
19      protect public safety in each discrete case by considering the  
20      dangerous implications of a life-maximum prisoner's crime  
21      individually. While the Board must point to factors beyond the  
22      minimum elements of the crime for which the inmate was  
23      committed, it need engage in no further comparative analysis  
24      before concluding that the particular facts of the offense make  
25      it unsafe at that time, to fix a date for the prisoner's  
26      release." (*Id.*)

27      Petitioner quotes *Biggs v. Terhune* (9<sup>th</sup> Cir. 2003) 3134  
28      F.3d 910, 917 for the proposition that "A continued reliance in

1 the future on an unchanging factor, the circumstances of the  
2 offense and conduct prior to imprisonment, runs contrary to the  
3 rehabilitative goals espoused by the prison system and could  
4 result in a due process violation." (Id.)

5 In contrast to the situation in Biggs, however, the  
6 transcript of the instant hearing, although missing a number of  
7 pages, discloses that the Board didn't feel that Petitioner was  
8 being particularly honest at the time of the hearing  
9 (Transcript Page 80:13-23), a finding subject to change that  
10 would tend to support the conclusion that Petitioner's release  
11 presented a potential danger to society; that his Parole  
12 employment plans were an incomplete package (Transcript Page  
13 80:23-81:13), a factor subject to change that increases the  
14 likelihood that Petitioner would return to criminal activity in  
15 order to earn a suitable living; and that Petitioner did not  
16 exhibit remorse (Transcript Page 81:17-82:1), a factor subject  
17 to change that increases the likelihood that Petitioner will  
18 commit further crimes. These mutable findings, in addition to  
19 the findings regarding the nature of the offense itself,  
20 constitute "some evidence" supporting the finding that the  
21 parole of Petitioner "would pose an unreasonable risk of danger  
22 to society or a threat to public safety."

23 D. Petitioner's Assertion Of An Underground Policy Not To  
24 Grant Parole On The First Hearing Or That Petitioner Was  
25 Advised In Advance That Parole Would Be Denied Is  
26 Irrelevant Because The Instant Board Made Specific  
27 Findings Justifying A Denial of Parole to Petitioner At  
28 This Time.

1       Petitioner asserts that there exists an underground policy  
2 in which parole is always denied at the first hearing and that  
3 he was told in advance that his parole would be denied. There  
4 is no evidence that this board made a decision to deny  
5 Petitioner parole before reviewing the file or considering the  
6 facts. The fact that other individuals predicted the outcome  
7 of Petitioner's hearing suggests that the board followed  
8 predictable guidelines. Even if one or more boards have acted  
9 arbitrarily in other cases, such actions are irrelevant in the  
10 instant case because the record reflects that the board made  
11 multiple findings of fact, each of which are independently more  
12 than sufficient to justify denial of parole.

13       Under Penal Code § 3041 and Title 15 of the California  
14 Code of Reg. §2402, there is no presumption that a life inmate  
15 is entitled to parole or that he/she is automatically suitable  
16 for parole based on the amount of time served. (*In re Honesto*,  
17 (2005) 139 Cal.App.4<sup>th</sup> 81, 92-93, see also *Dannenberg*, *supra*, 34  
18 Cal.4<sup>th</sup> at 1093.) Here, the Board's decision was not an abuse of  
19 discretion. The record of Petitioner's parole hearing indicates  
20 that there was some evidence to support the Board's decision to  
21 deny him parole and their statement of reasons for the denial  
22 was adequate. The Board considered the relevant factors under  
23 Title 15 of the California Code of Regulations §§ 2401, 2402  
24 and 2281. Based on these factors including the gravity of the  
25 commitment offense, Petitioner's institutional behavior, and  
26 his psychological evaluations, the Board's decision to deny  
27 Petitioner a parole release date was proper. (*Dannenberg*,  
28 *supra*, 34 Cal.4<sup>th</sup> at 1094-1096.)

1 E. While The District Attorney Objected To Parole There Is  
2 No Evidence Of An Unreasonable Bias Arising Out of The  
3 Porterfield Trial.

4 Petitioner asserts that the San Mateo District Attorney  
5 has a conflict of interest when making parole suitability  
6 recommendations because a prior Assistant District Attorney had  
7 threatened to "fry Petitioner's ass" and revoke Petitioner's  
8 plea agreement if the Assistant District Attorney failed to get  
9 a conviction in People v. Porterfield. While the District  
10 Attorney did oppose Petitioner's parole, there is no evidence  
11 that the opposition was a function of bias.

12 Petitioner has made several collateral attacks on his  
13 conviction where the claim of error related to the  
14 prosecution's rescission of the plea agreement, including two  
15 prior habeas petitions filed in this court on July 30, 1999 and  
16 March 29, 2000. Each petition was denied. It has long been  
17 the rule that, absent a change in law or fact, courts will not  
18 reconsider previously rejected claims. (*In re Clark* (1993) 5  
19 Cal.4<sup>th</sup> 750, 767.)

20 F. There Is Some Evidence Demonstrating That The Board Did  
21 Not Act Arbitrarily In Recommending That Petitioner (1)  
22 Get Self Help; (2) Stay Discipline Free; (3) Learn A  
23 Trade; (4) Perceiving That Petitioner Lacked Remorse; or  
24 (5) Considering the Cruel Manner of Petitioner's Offense.

25 Petitioner takes exception to the fact that the Parole  
26 Board recommended that he get self help, stay discipline free,  
27 learn a trade, found him to lack remorse, or that the Board  
28 considered the nature of his crime.

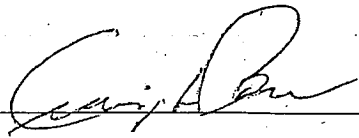
1 It is not clear what the Board based its recommendation  
2 concerning self help because Pages 78-79 of the Decision are  
3 missing from the Transcript. Petitioner must (i) state fully  
4 and with particularity the facts on which relief is sought and  
5 (ii) include copies of reasonably available documentary  
6 evidence supporting the claim. (*People v. Duvall* (1995) 9  
7 Cal.4<sup>th</sup> 464, 474.) Moreover, the logic of the recommendation  
8 that a petitioner seeking parole remain discipline free while  
9 incarcerated is self evident. While Petitioner contends that  
10 he has learned several trades or businesses while incarcerated,  
11 the fact is that Petitioner's plan as presented at the parole  
12 hearing was to work in a restaurant and perform human resource  
13 functions, wait tables or wash dishes (Transcript p. 81:6-13.)  
14 The board also specifically found that Petitioner lacked  
15 remorse for the victim. (Transcript at p. 81:17-21.)

16 The Board also found that the underlying offense was  
17 committed in an especially cruel manner, demonstrating  
18 "exceptionally callous disregard for human suffering" in that  
19 the victim was left bound for several days with duct tape over  
20 his eyes and fearing that he might be killed at any time.  
21 (Transcript at 82:11-83:7.) The Board found that the motive  
22 for the crime was inexplicable and very trivial in relation to  
23 the offense. (Transcript at 82:25-83:2.) It was appropriate for  
24 the Board to consider these matters and the findings are  
25 supported by some evidence.

CONCLUSION

The record establishes that there existed "some evidence" supporting each of the Board's findings, each of which independently sufficed as grounds supporting the finding that Petitioner would present a threat to society, and therefore justifying the denial of parole.

DATED: OCT 16 2006

  
Craig L. Parsons  
Presiding Judge, Criminal

Name La Merle R. JohnsonAddress P.O. 409060(C15-208L)Ione, CA 95640-9060CDC or ID Number J-92682

SAN MATEO COUNTY

AUG 22 2006

Clerk of the Superior Court

BY DEPUTY CLERK

FOR THE COUNTY OF SAN MATEO

STATE OF CALIFORNIA

(Court)

CMS

LA MERLE R. JOHNSON

Petitioner

vs.

ROSANNE CAMPBELL, Warden (A)

Respondent

## PETITION FOR WRIT OF HABEAS CORPUS

No.

SC 31800 B

(To be supplied by the Clerk of the Court)

## INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.



## This petition concerns:

- ☐ A conviction
 ☒ Parole  
☐ A sentence
 ☐ Credits  
☐ Jail or prison conditions
 ☐ Prison discipline  
☐ Other (specify): \_\_\_\_\_

1. Your name: La Merle R. Johnson
2. Where are you incarcerated? Mule Creek State Prison
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").  
kidnap/ransom
- b. Penal or other code sections: 209(a)
- c. Name and location of sentencing or committing court: San Mateo County Superior Court
- d. Case number: SC 31800
- e. Date convicted or committed: January 2006
- f. Date sentenced: ''
- g. Length of sentence: Life+11 years
- h. When do you expect to be released? When the Court releases me
- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:  
Edward Pomeroy

4. What was the LAST plea you entered? (check one)

☒ Not guilty
 ☐ Guilty
 ☐ Nolo Contendere
 ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury
 ☐ Judge without a jury
 ☐ Submitted on transcript
 ☐ Awaiting trial



6. **GROUND(S) FOR RELIEF**

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (if you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

'See Attached'

a. **Supporting facts:**

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who did exactly what to violate your rights at what time (when) or place (where).* (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

'See Attached'

b. **Supporting cases, rules, or other authority (optional):**

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

b. Result \_\_\_\_\_ c. Date of decision: \_\_\_\_\_

d. Case number or citation of opinion, if known: \_\_\_\_\_

e. Issues raised: (1)

(2) \_\_\_\_\_

(3) \_\_\_\_\_

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No. If yes, give the following information:

a. Result n/a b. Date of decision:

c. Case number or citation of opinion, if known: \_\_\_\_\_

d. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

n/a

n/a

### 11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:  
n/a

n/a

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.  
*Attach documents that show you have exhausted your administrative remedies.*

MC-275 (Rev. July 1, 2005)

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: n/a
- (2) Nature of proceeding (for example, "habeas corpus petition"): \_\_\_\_\_
- (3) Issues raised: (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (4) Result (Attach order or explain why unavailable): \_\_\_\_\_
- (5) Date of decision: \_\_\_\_\_
- b. (1) Name of court: \_\_\_\_\_
- (2) Nature of proceeding: \_\_\_\_\_
- (3) Issues raised: (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (4) Result (Attach order or explain why unavailable): \_\_\_\_\_
- (5) Date of decision: \_\_\_\_\_
- c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:  
n/a
15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)  
n/a Timely-Filed

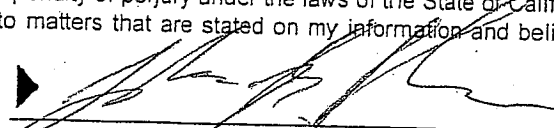
16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known: \_\_\_\_\_

17. Do you have any petition, appeal, or other matter pending in any court? ☒ Yes. ☐ No. If yes, explain:  
Writs in California Supreme Court seeking to protect children from  
predators, S142658, Writ of Error Coram Vobis, & District Court, etc.

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:  
n/a

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: August 16, 2006

  
(SIGNATURE OF PETITIONER)

1 La Merle R. Johnson, J-92682  
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5 IN THE STATE OF CALIFORNIA

6 COUNTY OF SAN MATEO

7	LA MERLE R. JOHNSON,	)	Case # _____
8	Petitioner,	)	
9	vs.	)	WRIT OF HABEAS CORPUS DUE TO
10	ROSANNE CAMPBELL,	)	DENIAL OF PAROLE ELIGIBILITY
11	Respondent.	)	

12 FACTS

13 Petitioner is serving a Life+11 year sentence for the  
 14 kidnap/ransom of Ellis Fouts. On March 22, 2006, Petitioner  
 15 had his initial (first) parole-eligibility hearing, he was  
 16 denied parole for 2-years. Prior to having the initial  
 17 hearing, Petitioner was informed by Board Member and other  
 18 State-Workers, that he would be denied parole, (See Exh. A,  
 19 # 1); he filed a habeas corpus in San Mateo County Superior  
 20 Court advising them of such, petition denied. (Exh. B.)

21 After advising Petitioner that parole was denied, the  
 22 Board told him, "This was the factors that we used, first of  
 23 all the offense was carried out in a specially cruel and  
 24 callous manner." (Exh. C., pg. 77, ln. 16-18)

25 Claim I

26 STATUTE ALLOWING BOARD TO DENY PAROLE BASED ON FACTS THAT CAN  
 27 NEVER BE CHANGED IS UNCONSTITUTIONAL, U.S.C.A 5 & 14

28 California Penal Code, (henceforth PC) 3041(b), enables  
 the Board to base denials on unalterable facts;

1 "The Panel or board SHALL set a release  
2 date unless it determines that the gravity  
3 of the current convicted offense or past  
4 convicted offenses, is such that consideration  
5 of the public safety requires a more lengthy  
6 period of incarceration for this individual,  
7 and that a parole date therefore, cannot be  
8 fixed at this meeting."

9 Biggs v. Terhune 2003 DJDAR 7245, stated that a life  
10 prisoner does have a liberty-interest in a parole hearing,  
11 also stated, "A continued reliance in the future on an  
12 unchanging factor, the circumstances of the offense and  
13 conduct prior to imprisonment, runs contrary to the  
14 rehabilitative goals espoused by the prison system and could  
15 result in a due process violation."

16 Petitioner dis-agrees with Biggs (supra) in part, asserting  
17 that any reliance on unchangeable factors is a due process  
18 violation, which would make the statute (PC 3041. (b))  
19 allowing for such unconstitutional.

20 Life with the possibility of parole means just that, life  
21 with the possibility of getting out one day. When the person  
22 is given the sentence, the sentencing Court is already aware  
23 of the persons past, which may play heavily into giving them  
24 the sentence. The sentence comes with a statutory timeline  
25 regarding how much time the person SHALL serve before parole  
26 can be considered.

27 Once the person becomes eligible they are then sent  
28 before the parole-board, to consider whether or not the person  
can safely return to society. Now at this point, it is a  
fact that the person has done something horrible warranting  
their need to see a parole-board, but the Boards job is not

1 to re-sentence the person, (U.S.C.A. 5), for crimes the Court  
2 has already sentenced them for, but instead to assess whether  
3 or not, today, that day, the person is not a threat to society.

4 With that in mind, the Board's job being to assess whether  
5 or not the person is a current danger, the only factors that  
6 can illuminate the potential or non-potential threat level is  
7 in-prison behavior, facts occurring after the sentencing and  
8 which are things the prisoner can actually do.

9 So, the logical question is this, if the only behavior  
10 which the Board can use to justify release, is post-crime  
11 (in-custody) behavior, how is it constitutional if the statute  
12 allows them to deny parole based on things not controllable  
13 by anybody, the altering of the past?

14 PC 3041(b)(2) & CCR Title 15, §2268(c)

15 When denying parole, it is statutorily  
16 mandated that the Board;

17 'Board SHALL advise prisoner of reasoning  
18 for denial, and, (Penal Code), "suggest  
19 activities in which he or she might  
participate that will benefit him or her  
while he or she is incarcerated."

20 It seems the statutes are in conflict, on the one hand  
21 PC 3041 (b) allows for the Board to deny parole based on  
22 unchangeable facts, but PC 3041(b)(2), instructs the Board to  
23 advise the person on what activities to involve themselves in  
24 to be considered for parole, the only logical-reasoning for  
25 the purpose to be before the Board. The Board, when denying  
26 parole based on crime factors, (PC 3041(b)), could not  
27 possibly reasonably fulfill their statutory obligation per  
28 PC 3041(b)(2), because no-thing the Board can recommend or

1 suggest will alter the past, therein lies the conflict.

2 When the Board is enabled to deny parole based on facts  
3 that can not be changed, they automatically fail to adhere to  
4 their statutory obligation of suggesting activities for the  
5 prisoner to engage in which could make them paroleable,  
6 because nothing can change the past.

7 Also, the Board's own actions further highlight the  
8 constitutional-problems beforementioned. Statistically the  
9 Board denies parole 99+% of the time at initial hearings, and  
10 98+% at subsequent hearings, (See Exh. A., # 2, & Exh. D,  
11 Public Information Request). In all of those hearings where  
12 parole is denied, the crime is used as a factor. When at some  
13 future date in a subsequent hearing, parole is granted, what  
14 factors could the Board possibly utilize to justify release  
15 after having previously utilized the unchangeable crime  
16 factors as reasoning for denial?,..... the justification  
17 warranting release can only come through positive in-prison  
18 behavior, accomplishments. And that is true in the rare  
19 instances where parole is granted at the initial-hearing,  
20 in-prison positive behavior is used to justify the granting  
21 of parole.

22 Constitutionally (Due Process) speaking, if the only  
23 reason the Board can justify lifer-release is positive in-  
24 prison behavior, then how can it ever be fair, in respect  
25 of the liberty interest that a prisoner has at a parole-  
26 hearing, for the Board to be able to utilize factors that  
27 can not be changed. Note: (The Board has never rationalized  
28 to the general-public and or the reviewing Full-Board and



1 Governor that they are recommending release of a life-prisoner,  
2 just-because, and not putting on the record the gains and other  
3 reasoning justifying their decision, gains being from in-  
4 prison behavior.)

5 As this relates to Petitioner, his Constitutional Rights  
6 have been violated when his crime factors were/are utilized  
7 to deny him parole; in that he is being re-sentenced by the  
8 Board, twice being put in jeopardy for the same offense,  
9 U.S.C.A. 5 & 14; his liberty interest of the parole-hearing  
10 is violated when unalterable facts are used to deny parole at  
11 any stage, U.S.C.A. 14; and the statute itself is made by  
12 the writers unconstitutional, because when past crimes are  
13 used to deny parole per PC 3041(b), then the Board is unable  
14 to fulfill its statutory obligation of PC 3041(b)(2) because  
15 nothing they can suggest the prisoner to do to make them  
16 eligible, can alter/change the past, U.S.C.A. 5 & 14.

17 Claim II

18 Prior to ever going before the Board, Petitioner was told  
19 by several reliable sources, (Exh. A., #1), that he would  
20 not be receiving a parole date at his initial hearing; not  
21 for anything he did or failed to do, but simply because  
22 despite the statutory language, "The Panel or board SHALL set  
23 a release date...", (PC 3041(b)), the Boards known  
24 un-spoken/underground policy was that inmates did not receive  
25 parole-grants at their initial hearings.

26 This un-spoken/underground policy which clearly conflicts  
27 with the mandatory language of the statute, is clearly in  
28 effect when looked at in connection with the statistical



1 data regarding parole-grants at initial board-hearings;  
2 99+% of those going to their initial hearings are denied  
3 parole. (Exh. (See Exh. A. # 2, & Exh. D.)

4 PC 3041(b) contains mandatory language, "The Panel or  
5 board SHALL set a release date...", going on to outline the  
6 criteria excusing the ignoring of the mandatory language. As  
7 Petitioner pointed out in Claim I, the criteria (crime &  
8 other pre-prison acts) giving cause to ignore the mandatory  
9 language is in his opinion, unconstitutional.

10 But regardless of whether or not it (PC 3041(b) is  
11 unconstitutional as described in Claim I, what is clear is  
12 that the Board has en-acted and en-forced an underground  
13 policy that conflicts with the Statute.

14 This is easily proven by the consideration of one-  
15 question;

16 In light of the fact, that every lifer-case  
17 has its own unique factors, how probable,  
18 logical, is it, that 99+% of the time, the  
19 criteria set out which excuses the Board to  
20 ignore the mandatory language of setting a  
21 date, is warrented?

22 The setting of the date, in fact based on the statutes  
23 mandatory language, should be the norm, not the exception,  
24 but in the instances of the California Panel/Board practices  
25 of its parole procedure, it is the norm not to set the date,  
26 to ignore the mandatory language, and it is not even the  
27 exception to set the date when minus 1% is found suitable at  
28 initial hearings.

CCR. Title 15, (Board of Prison Terms), §2250, states  
that a prisoner is entitled to an Impartial Hearing Panel,

1 a fair and impartial hearing, yet how is that possible when  
2 the panel is en-forcing an illegal-policy?

3 Petitioner's parole-eligibility was pre-determined prior  
4 to him ever entering the Board-Room, this is reasonably  
5 stated when considering that he was told by reliable sources,  
6 (A Board Member, two of his previous Counselors, one of which  
7 wrote his Board-Report, and other's.), prior to the hearing  
8 that he would not be receiving a date. (See Exh. A. #1);  
9 he advised the Superior Court of County of commitment of this  
10 months in advance of the hearing through a writ of habeas,  
11 which was denied, (Exh. B.);

12 But most important in the illumination of this issue, is  
13 the undeniable statistical-data that clearly shows that an  
14 underground/unwritten/un-spoken policy is in play which  
15 mandates that a parole date not be set, ignoring the statutory  
16 language which mandates that the date is set; 99+% of  
17 differing case-factors prisoners are denied parole.

18 Petitioner's right to a fair and impartial hearing, his  
19 liberty interest of due process (U.S.C.A. 5 & 14) innate in  
20 a parole-eligibility hearing, can not possibly, reasonably,  
21 be adhered to when years prior to the hearing the outcome is  
22 conveyed to Petitioner; AND, when he's forced to have a  
23 hearing under conditions/policies that he can not defend  
24 against because there blatantly illegal and not written down  
25 for constitutional review by the Courts.

26 Claim III

27 FACTS: While incarcerated in the San Mateo County Jail  
28 awaiting trial on his own case, Petitioner thwarted a murder-

1 plot being hatched by detainees attempting to manipulate the  
2 outcome of their individual trial-process. As a result  
3 Petitioner eventually became a witness for the San Mateo  
4 County District Attorney's Office, against Frank Porterfield  
5 and Bernard Knight in exchange for a plea-agreement of 17  
6 years, 8 months, with half-time credits, which would have  
7 released him from prison in 2001.

8 During the stage of being a witness for the prosecution,  
9 the San Mateo County Sheriff's Department purposefully and  
10 continuously placed Petitioner's life in danger.

11 While Petitioner slept in his cell, Sheriff Personnel  
12 placed Bernard Knight in the cell with him, this after he  
13 had testified against Knight in open Court at a preliminary  
14 hearing. (See Exh. E., Rt. 1564-65)

15 Eventually a Court-Order was issued, ordering that  
16 Petitioner be housed in a different County Jail, though  
17 stating in the order that it was due to Petitioner's fears.  
18 (See Exh. F.)

19 Bernard Knight and Frank Porterfield's trials were  
20 severed, Porterfield going to trial first. Petitioner  
21 testified against Porterfield. After the truth-full  
22 testimony, Petitioner was beat up and threatened by Sheriff-  
23 Personnel of San Mateo County, some of the comments made to  
24 him were;

- 25 - You're going to be set up and killed for  
26 cooperating with the D.A.'s (San Mateo  
27 County) office. (Exh. E., Rt. 1589, 1618)  
28 - Your enemies will be placed with you. Rt. 1588

- 1           - You're a snitch, watch out for Pelican
- 2           Bay. Rt. 1586-87 & Exh. G, pg. 21-22
- 3           - We're going to make sure that your snitch
- 4           jacket follows (To-Prison) you. Rt. 1589
- 5           - That the D.A. was lying to him (About being
- 6           able to protect him in prison). Rt. 1645
- 7           - That there is a cop-side and an inmate-
- 8           side, and that he (Petitioner) had better
- choose one. Rt. 1622-23, & 1633
- 9           - Petitioner was hog-tied and naked when most
- 10          of the threats were made. Rt. 1586-87

11       Note: All Rt. cites are to documents contained in Exhibit E.

12       After threats were made, Petitioner in reasonable fear

13       of threats being delivered, recanted his testimony. In

14       investigating recantation, it was confirmed by Inspector

15       Bill Cody of the San Mateo Sheriff's Department that the

16       incident and threat(s) did take place. (Exh. G. pg. 16, 21-22)

17       In spite of the threats, and reasonable fear, Petitioner

18       eventually recanted the recantation, citing fear, in an

19       exchange he had with defense counsel of Porterfield after

20       recanting recantation, here is what he said;

21               "I don't know what happens in jails or

22               penitentiary. I know I'm safer in San

23               Francisco. Yeah. That's true. I'm not

24               bothered. I'm not harassed.

25               Sergeant Dowdy (One of those delivering

26               threats) told me that they were going to

27               send a package with me regardless. (Package;

28               documentation telling prison that Petitioner

              was a snitch, inference to him that he would

              be killed because of it.)

              The only reason I called Dirickson (Investigator

              Petitioner had revealed murder-plot too, whom

              when recanting out of fear he blamed his

              testimony on Dirickson, stating Dirickson had

              fed him the murder-plot story, and whom he called

              in this instance to recant recantation and ask

              for FBI intervention because he did not know who

1 to trust) was because I don't, when I  
2 walked out of here last week, (After  
testifying truthfully, no recantations),

3 I felt good about myself. I felt that I had  
4 done something right. (After testifying  
about a murderer who had confessed to him,  
5 and was plotting more murders to influence  
his case, which Petitioner tried to sway him  
6 to abandon the plot, and only called  
Authorities when it became clear that the  
7 plot was going forward when weapons were  
obtained; upon Petitioner's information the  
8 weapons were confiscated and the plot was  
foiled.)

9 The only reason I changed it (recanted original  
10 testimony) was because I'm scared.

11 And I'm still scared. (Rt. 1649)

12 Petitioner later revealed that detainee Stephon Williams  
13 had also threatened him on the night that Sheriff-Personnel  
14 beat and threatened him. (Rt. 1663)

15 At the end of Petitioner's testimony, defense counsel  
16 motioned to have Petitioner's and another witness' testimony  
17 stricken due to perjury, then Deputy District Attorney (DDA)  
18 Charles Smith stated;

19 "And, that it should be stricken as being  
20 completely unreliable regarding Lamerle  
21 Johnson. Your Honor you heard his testimony:  
The first version, the second and the third.

22 And what is CLEAR is that the system FAILED  
23 him ultimately, because I'm responsible for  
any witness' safety ultimately.

24 And, the FAULT is MINE; NOT HIS." Rt. 1676, Ln.  
19-25

25 The case went to the jury, with DDA Smith using  
26 Petitioner's testimony in his attempt to convict Porterfield.  
27 Petitioner was told that if Porterfield trial won, that he  
28 would get his plea, but that if it was lost, that Chief

1 Deputy Prosecutor Steve Wagstaff had stated that he was going  
2 to fry Petitioner's ass. (Exh. H, #11).

3 Important Note: Steve Wagstaff was the Chief Deputy under  
4 District Attorney Jim Fox, both men are still today in those  
5 same positions.

6 Porterfield trial lost, San Mateo County District Attorneys  
7 Office filed a motion to rescind Petitioner's plea-agreement.  
8 Court then appointed Edward Pomeroy to represent Petitioner,  
9 who without the record of DDA accepting responsibility for  
10 Petitioner's actions, advised Petitioner to not oppose the  
11 Prosecutions' motion to rescind. After the motion was granted,  
12 Petitioner learned that Pomeroy was the ex-attorney for  
13 Bernard Knight, the defendant whom he had testified against  
14 and awoke to find being placed in his cell by Sheriff-Personnel.  
15 And that if Pomeroy had succeeded in salvaging Petitioner's  
16 plea, which would have called for him to still testify against  
17 Knight; that Pomeroy would have been testifying on behalf of  
18 Knights's defense in the same murder trial Petitioner was  
19 scheduled to testify against Knight.

20 Pomeroy avoided the conflict with Knight, by advising  
21 Petitioner to not fight for his plea, thus creating a conflict  
22 with Petitioner. (Exh. H., #8-10, &12; Court was aware of the  
23 conflict, #10, never acted on it.)

24 Despite Pomeroy acting in accordance with the conflict and  
25 not in the best interest of his client at the rescission  
26 hearing, some interesting exchanges were had in the Court  
27 room as it related to Petitioner's safety in the San Mateo  
28 County Jail, brought up by the DDA motioning for rescinsion.



Discussion After Rescission-Motion Granted

DDA: "There is an order for housing Mr. Johnson in San Francisco and the conditions underlying that order have not changed. We ask he remain-- however, I will do an order of return, given the problems we had in this matter."

Court: "Mr. Pomeroy, you are aware of that order?"

Pomeroy: "Yes."

Court: "In fairness to Mr. Johnson, I think he should be housed in San Francisco, but if that's going to impinge upon your preparation for trial and so forth, that issue will have to be addressed at some point."

Pomeroy: "No, your Honor. It will just give me an opportunity to go to San Francisco and sample some better restaraunts."

DDA: "Just for the record, this was Mr. Pomeroy's request when we discussed it off the record."

Court: "I understand the reasons for it. In fairness to Mr. Johnson, I think it's CRITICAL to order that he be housed in San Francisco." (Exh. I, pg. 7)

In an earlier exchange between the Porterfield Court prior to Petitioner's recantation on the record, the same Court who issued the protective-housing order citing that Petitioner believed his life was in danger if he stayed in the San Mateo County Jail;

Counsel: "He (Petitioner) also requested me to ask the Court that he be immediately transferred back to San Francisco after his testimony.

Based on police problems he had in the jail when he was here testifying last week. And, again, part of the errors that occurred this afternoon, in having him placed (By San Mateo County Sheriff-Personnel) in the same cell with the defendant (Frank Porterfield) just a few moments ago.

Court: I'm not going to make any specific orders to the Sheriff's Office regarding transportation. I don't know if we will even be through with his testimony this afternoon.

1 But, I certainly will express the HOPE, and  
2 will ask the bailiff in this department to  
3 convey to the transportation officials that,  
obviously, Mr. Johnson is an in custody witness  
in a criminal case.

4 And that he ought to be both housed and  
5 transported accordingly. (Rt. 1505)

6 Petitioner's case was taken to trial, prosecuted by then  
7 DDA Stephen Hall, he predictably lost and was sentenced to  
8 Life+11 years in prison. After the conviction, per the Penal  
9 Code 1203.01, 'Statement of Views', Stephen Hall in  
10 representation of the San Mateo County District Attorney's  
11 Office, recommended that I never be released from prison,  
12 and in that statement failed to advise the prison of any  
13 danger to Petitioner's life.

14 Important NOTE: Stephen Hall is now the Presiding Judge  
15 of San Mateo County.

16 Upon arriving in prison, every threat made to Petitioner  
17 by San mateo County Sheriff Personnel came true, he was  
18 placed with his enemies and eventually slashed/stabbed by  
19 Stephon Williams, the same Williams who threatened Petitioner  
20 on the night that Sheriff Personnel did, (Rt. 1663), and the  
21 same Williams who was known by Prison-Personnel as being  
22 Petitioner's enemy. (Exh. H., #13)

23 No charges were ever brought against any Sheriff-Personnel  
24 or inmates in regards to the threats and assaults Petitioner  
25 suffered. State Attorney General's Office was made aware of  
26 all of the above-mentioned, and provided with the documentation  
27 (And more) accompanying this writ as exhibits, as of today,  
28 no action was taken by the Chief Law Officer of the State.



1 On March 22, 2006, at Petitioner's Board Hearing, San  
2 Mateo County, through Deputy District Attorney Sean Gallagher,  
3 opposed Petitioner's request for parole.

4 Argument

5 CCR Title 15, (supra), §2030, 'Prosecutor Participation',  
6 §2030(3), "...if the district attorney cannot appear because  
7 of a conflict."

8 It should go without saying that to have a fair and  
9 impartial parole hearing, the prosecutions' office opposing  
10 or requesting parole should be unbiased.

11 In this instance, an instance where San Mateo County  
12 Sheriff Personnel continuously set Petitioner up to be  
13 killed in relation to him cooperating with the District  
14 Attorney's Office, DDA admitted the system (San Mateo  
15 County) had failed Petitioner, (Rt. 1676), and the Chief  
16 Deputy Prosecutor threatened to fry Petitioner's ass if he  
17 lost a case, (Exh. G., #11), that just maybe San Mateo  
18 County should not be allowed to make a recommendation  
19 regarding Petitioner's Parole-Eligibility.

20 Not to mention the fact that the key-players mentioned  
21 throughout the before facts, Steve Wagstaff, James/Jim Fox,  
22 and Stephen Hall, (San Mateo Counties, Chief Deputy  
23 Prosecutor, Elected District Attorney, and Presiding Judge,  
24 top three law-officers of County), are still in place  
25 today.

26 Petitioner can not possibly receive a fair or impartial  
27 parole-hearing with San Mateo County being allowed to make  
28 a recommendation, U.S.C.A. 5 & 14; Petitioner and his

1 counsel at the Board hearing made this objection. (Exh. C.,  
2 pg. 11-12)

3 The County of San Mateo, Judges, D.A.'s, and Defnese  
4 Counselors, knew that Petitioner's life was in danger by  
5 San Mateo County Sheriff Personnel, that danger followed him  
6 to prison as the threat stated it would, yet not one sworn  
7 Fiduciary Officer of the Court advised Prison-Personnel of  
8 the reasonably-predictable danger to Petitionener's life;  
9 no one stood up to protect Petitioner's plea, despite the  
10 fact that everyone knew police-duress had caused it to be  
11 in jeopardy, and despite the fact that the San Mateo County  
12 District Attorney's Office was okay while knowing the same  
13 facts it knows now, with Petitioner going home in 2001 if  
14 they won the Porterfield/Knight case, that same office now  
15 recommends that Petitioner in essence never be released  
16 from prison, die in prison, because as their DDA Smith put  
17 it;

18 "...What is clear is that the system failed  
19 him ultimately.

20 And, the fault is mine (San Mateo County);  
not his."

21 Constitutionally, it would be a slap in the face of  
22 justice, to not order that San Mateo County never again take  
23 any role in the current instance surrounding Petitioner's  
24 incarceration.

25 Another un-known factor of how this effected Petitioner's  
26 parole hearing is this; off the record, the Presiding  
27 Commissioner Archie "Joe" Biggers, asked San Mateo County  
28 Deputy District Attorney Sean Gallagher about the plea-

1 agreement. (See Exh. A., # 3) Defense counsel conveyed this  
2 to Petitioner during the intermission/deliberation, stating  
3 that Commissioner Biggers asked DDA Gallagher this after he  
4 left the room and before deliberations began; counsel did not  
5 hear exactly how DDA Gallagher responded.

6 Petitioner can not state with any degree of certainty how  
7 DDA Gallagher responded to the Commissioner's question, but  
8 he can reasonably state that he did not go into the detail  
9 outlined in the facts of this writ.

10 And whatever DDA Gallagher said in response, it did not  
11 stop the Commissioner from stating;

12 "We also noted that the District Attorney  
13 from San Mateo County in accordance with 3042  
14 notices communicated opposition to a finding  
of parole suitability." (Exh. C., pg. 81, Ln. 13-17)

15 So, in this instance, a District Attorney's Office  
16 with a clear conflict of interest recommendation to oppose  
17 parole-suitability was cited in the reasoning justifying  
18 denial. An office, which for arbitrary and capricious reasons  
19 are requesting denial of parole; (Wagstaffe sought maximum  
20 sentence for revenge purposes, not out of justice, Exh. H.,  
21 # 11). In speaking on what a miscarriage of justice can  
22 entail in, Sawyer v. Whitley 505 U.S. 333, 112 S.Ct 2514,  
23 stated;

24 "The accusatorial system of justice adopted  
25 by the Founders affords a defendant certain  
26 process-based protections that do not have  
27 accuracy of truth finding as their primary  
28 goal. These protections--including,...the  
Eighth Amendment right against the imposition  
of an arbitrary and capricious sentence."  
at 2528

1 Now, parole-board case-precedent has given the Board wide-  
 2 discretion, yet that does not trump the fundamental-rights  
 3 protecting prisoner's at the hearings.

4 In this matter the District Attorney had a clear conflict  
 5 which the Board ignored, and an opinion/request for parole-  
 6 denial which the Board utilized in its explanation of denial.

7 When opposing parole, the San Mateo County District  
 8 Attorney's Office continued to perpetrate the system's  
 9 failing Petitioner, (Rt. 1676), it continued to impose a  
 10 cruel and unusual punishment-sentence, which was sought out of  
 11 revenge (arbitrary and capricious reasoning) and is now  
 12 utilizing the Board of Parole Hearings to seek a slow-death  
 13 sentence where the actual death-threats-attempts on Petitioner's  
 14 life actually failed. (Exh. H., #13, Exh. G., pg. 16, 21-22,  
 15 and all threats outlined in Rt's.)

16 Constitutional Violations, U.S.C.A. 5, 8, & 14; prosecution  
 17 presence and recommendation made hearing unfair and partial.

#### 18 Claim IV

19 Board of Parole Hearings, denied parole, for as they  
 20 stated per PC 3041(b);

21 "This was the factors that we used, first of  
 22 all the offense was carried out in a  
 23 specially cruel and callous manner."  
 (Exh. C., pg. 77, Ln. 16-18)

24 Maximum 2-year denail given, reasoning;

25 "In a sepearte decision the panel finds that  
 26 it's not reasonable to expect that parole be  
 granted at a hearing during the following  
 two years.

27 And that was done primarily because again the  
 28 offense was committed in an especially cruel  
 manner..." (Exh. C., pg. 82, Ln. 8-13)

1 Per PC 3041(b)(2), the Board following the denial then  
 2 outlined its recommendations; stay disciplinary free, get more  
 3 self-help, and get another trade. (Exh. C. pg. 83-84, and Exh.  
 4 J.)

5 In Claims I & II Petitioner pointed out his disagreements  
 6 with the Statute(s), so he will re-assert them here without  
 7 rehashing them in full.

8 Regarding the Boards recommendations Petitioner has a few  
 9 things he would like to point out. The Board stated;

10 "We feel you should get some self help to  
 11 further assist you in understanding what  
 12 your commitment offense is or was."  
 (Exh. C., pg. 83, Ln. 19-21)

13 Earlier having stated;

14 "We also want to commend you for your work  
 15 while you have been here in prison."  
 Exh. C., pg. 82, Ln. 1-3

16 What work? Answer, starting self-help Groups, etc.

17 "You have several chronos. You just completed,  
 18 there is a chrono 1/31/06 that you completed  
 19 the Victim Awareness Offender Program and you  
 were instrumental in requesting the program for  
 Mule Creek." (Exh. C., pg. 39-40, Ln. 26-4)  
www.realisticreform.com (Exh. Q.)

20 In recommending get some self help, Petitioner's logical  
 21 question would be, what self help? The Board did not state  
 22 what kind to get, just to get some. After the denial was  
 23 read, explaining the why's of denial and what he should do,  
 24 he said, "Can I respond to any of that?", his lawyer told  
 25 him no. (Exh. C. pg. 84, Ln. 19-21)

26 Society is being scammed, yes, scammed, and this Petitioner  
 27 and other prisoner's Due Process Rights are being trampled  
 28 over when told to participate in Self Help groups offered in

1 California and this reasoning being used to justify parole-  
2 denials.

3 Scammed, strong language, what justifies its use? Inmate  
4 Richard Mejico, the founder of Criminal Gangs Anonymous (CGA),  
5 the same CGA cited in Petitioner's Board Hearing, (Exh. C.  
6 pg. 38), the same CGA currently functioning in several  
7 prisons and allowed inter-national news coverage by California  
8 Prison-Personnel as a unique self help group;

9 Yet Richard Mejico, was told by a Board/Panel, that  
10 he needed, more self help; went to Board, August 26, 2005.  
11 (See Exh. A., # 4, & Exh. D.), that proves the scam.

12 Richard Mejico was allowed to start the re-entry program  
13 at Mule Creek State Prison, the prison Petitioner is in. The  
14 re-entry programs mission is to prepare paroling inmates to  
15 reintegrate safely back into society. If Sacramento, Mule  
16 Creek State Prison, can en-trust a prisoner with initiating  
17 the re-entry program to protect society, then how can Richard  
18 Mejico be in need of self help?

19 Richard Mejico's CGA program was embraced because nothing  
20 else offered by the prisons seem to be working; 70+%  
21 recidivism rate in spite of self-help offered by prisons.

22 This Petitioner since 2005 has been trying to get the  
23 prisons to re-habilitate sex-offenders, a true danger to  
24 society. Submitting-proposals, (Exh. K), which were ignored,  
25 filing prison-appeals to protect children from child-  
26 predators in visiting-rooms, appeal denied, writ currently  
27 pending in California Supreme Court, #S142658, (Exh. L);  
28 another pending writ which was filed after prison-appeal was

1 denied is one seeking that all persons convicted of sex-crimes  
2 be re-habilitated prior to release. (Exh. M.)

3 Through legal-filings, prison appeals and proposals, and  
4 through a web-site, www.realisticreform.com, Petitioner is  
5 seeking reform of the prison system and implementation of  
6 realistic rehabilitative measures. (See Exh. Q.)

7 Even the current acting Secretary of Corrections, concedes  
8 that re-habilitation (self-help) is not possible under current  
9 prison-conditions. (Exh. N.) He blames it on overcrowding,  
10 but even before it became "overcrowded", California still had  
11 the highest recedivism rate (70+%) in the nation, despite the  
12 fact it spends the most money on prisons.

13 Get Another Trade

14 Petitioner has gotten two-trades while incarcerated, one  
15 his family paid for, Paralegal Certification, and the computer  
16 Vocations course he completed in prison. (Exh. C. pg. 82,  
17 Ln. 3-8).

18 Petitioner was told to get a trade that does not involve  
19 and or surround his current training, administrative  
20 management, just in case his career choice does not pan out.  
21 (Exh. C. pg. 83, Ln. 12-19)

22 Again, the public is getting scammed and Life-Prisoner's  
23 going before the Board ~~are~~ having their Due-Process rights  
24 ignored/trampled.

25 Why? California is spending 100's of millions in offering  
26 Prisoner's educational/vocational opportunities, but what  
27 overall effect is it having on improving public-safety? This  
28 Petitioner in an information request posed that and other



1 questions, (Exh. D.); requesting specific information, data-  
2 analysis, as to how much money prisons spend on offering  
3 Vocations, how many prisoner's get out and secure employment  
4 in the trained fields, what type of tax-revenue was being  
5 realized from inmates released and securing employment in the  
6 trained field, and did the numbers (money-spent) prove that  
7 the expended revenues (tax-dollars) were cost-effective.

8 Public Information request was filed in January of 2006,  
9 2-months prior to Petitioner's parole hearing. In early  
10 March, Sacramento sent the request to MCSP Facility 'C'  
11 Captain Robinson, and told him to respond to Petitioner.  
12 Robinson stated clearly to Petitioner that he could not  
13 respond to the request, and doubted if the California  
14 Department of Corrections and Rehabilitation was even in  
15 possession of such data. (Exh. A., # 5) The information  
16 request has still not been responded to, 8-months later.

17 Petitioner even filed a prison-appeal on this issue,  
18 (Exh. O.), the prison told him he had no standing to file  
19 such an appeal; so Petitioner listed that and other ignored  
20 appeals on his website, [www.realisticreform.com](http://www.realisticreform.com), requesting  
21 the public to demand action on such, in his opinion, common-  
22 sense issues.

23 Petitioner's constitutional point is this, he's doing  
24 more to re-habilitate himself in Vocational training and in  
25 other areas then the prisons are, and even their head-person  
26 states he can't do it, (Exh. N.), the recidivism rate  
27 reflects that the prison can not do it and this was before the  
28 "overcrowding", so it seems the only solution is for the



1 Courts (State/Federal) to step in and assess parole-eligibility  
 2 and in Petitioner's opinion, to re-structure the prisons to  
 3 trully bring about public-safety.

4 Know More About Job

5 Petitioner was criticized in the denial for his parole-  
 6 plans, Board stating;

7 "Your parole plans was not a total package as  
 8 well. You sat here and you could stay with your  
 9 sister or you could stay with your brother and  
 10 when the Deputy Commissioner asked you about  
 11 your employment plans well you said that you  
 12 were going to work with your brother in a  
 13 restaurant and you didn't know what type of  
 14 restaurant it was. You said you thought it was  
 15 something like a Denny's okay. If your going to  
 16 be employed, then we go furthur into the finding  
 17 out about the restaurant,

18 what you would do there, well he initially  
 19 wanted me to be the Human Resources person  
 20 but I need furthur training, then you said  
 21 that I'll do dishwashing, I'll do anything  
 22 but then you need to find out what type and  
 23 pin down as to what job you are going to have."  
 24 (Exh. C., pg. 80-81, Ln. 24-13)

25 This Petitioner took the Board three parole-plans, one  
 26 with his brother Du Shawn Johnson who is a Detective for the  
 27 Visalia Police Department and owns several business';  
 28 when offered the job, Petitioner reasonably did not request  
 every business-detail of his brother's business, conveyed to  
 the Board;

29 "He owns kind of like a Denny's or something  
 30 like it, it's not a Denny's but it's something  
 31 along those lines. Some chain of restaurants  
 32 that he bought into so it's that type of  
 33 restaurant and go to school."

34 When asked what he would do.

35 "What ever he assigned me. He wanted me to be  
 36 a Human Resource Manager, I think I would need  
 37 some more training to do that but wash dishes,



1 evaluation, that his report was great considering it came from  
2 that particular Doctor. (Exh. C., pg. 47-49), and the Doctor  
3 stated that Petitioner's remorse was real, that he accepted  
4 responsibility for his crimes, but the Board described his  
5 remorse and acceptance in this manner;

6 "I don't really think that you understand  
7 the magnitude of what you did by this kidnap  
8 for money, so you need to take a look at that  
9 because I don't think in here, just in the  
10 way that you talked to us today, we didn't get a  
11 sense that you really understood the nature  
12 of your crime, or your commitment offense.

13 Yeah you said okay I know what I did blah, blah,  
14 blah but do you know what you did to the victim  
15 or how it impacted that particular victim."  
16 (Exh. C. pg. 83-84, Ln. 21-5)

17 Later stating;

18 And your plan, we talked a little bit about you  
19 going to LA, you had testimony and the record  
20 there from your crime partners who said yeah  
21 he did this and yes he did that.

22 There was some inconstancies on what took place,  
23 who was involved in the conversations and we  
24 just feel that you need to take a little self  
25 help, analyze and come to the realization as to  
26 what actually took place."  
27 (Exh. C., pg. 84, Ln. 5-13)

28 Just another point of why in Claim I & II Petitioner  
29 contends past crimes should not be cause to deny parole, but  
30 the Commissioner's closing statement is even more egrigious  
31 because it directly conflicts with an earlier one he made;

32 "Nothing that happens here today will change  
33 the finding of the court."

34 Okay, Petitioner was not charged nor convicted  
35 of going to LA, which was alleged by his crime  
36 partners.

37 "We are not here to re-try your case, we are here  
38 to determine if you are suitable for parole."  
39 (Exh. C., pg. 7, Ln. 1-5)

1 If nothing that happens in the hearing will change the  
2 finding of the Court, and the point of the hearing is not to  
3 re-try the case, then how can the Board Constitutionally  
4 state that Petitioner needs self help because he failed to  
5 admit to committing acts his crime-partners stated he did,  
6 which he hadn't been charged or convicted of?

7 Claim V & Conclusion

8 Blah, Blah, Blah, is what Petitioner's initial-parole  
9 hearing turned out to be in regards to the Board respecting  
10 the Constitutionally protected liberty interest of the  
11 process. Simply put, the fix was in, Claim II, and they did  
12 want they wanted to do instead of what the Constitution  
13 mandated they do.

14 The cumulative effect of all of the beforementioned  
15 violations rendered Petitioner's entire parole-hearing  
16 process, unconstitutionally sound.

17 Petitioner's continued incarceration and being forced  
18 to go through the California Parole Hearing Process (Farce);  
19 will exacerbate and indefinitely prolong a 'Miscarriage of  
20 Justice'.

21 Although not a miscarriage of justice in the conventional  
22 sense of actual/factual innocence, the United States Supreme  
23 Court has made the following comments on the subject;

24 "Most important, however, the focus on innocence  
25 assumes erroneously, that the only value worth  
26 protecting through federal (State) habeas review  
is the accuracy and reliability of the guilt  
determination.

27 But "[o]ur criminal justice system, and our  
28 Constitution protect other values in addition to  
the reliability of the guilt or innocence

determination, and the statutory duty to serve 'law and justice' should similarly reflect those values. Sawyer v. Whitley (supra) 112, at 2528, quoting, Smith v. Murray 106 S.Ct. 2661, at 2672

Later stating;

"While the conviction of an innocent person may be the archetypal case of a manifest miscarriage of justice, it is not the only case. There is no reason why "actual innocence" must be both an animating and the limiting principle of the work of federal (State) courts in furthering the "ends of justice." As Judge Friendly emphasized, there are contexts in which, irrespective of guilt or innocence, constitutional errors violate fundamental fairness. Friendly, is innocence irrelevant?

Fundamental fairness is more than accuracy at trial (Parole-Hearings); justice is more than guilt or innocence."  
Sawyer at 2530

In another Opinion, having nothing to do with Parole-Hearings, but addressing Miscarriages, Dretke v. Haley (2004) 124 S.Ct 1847, at 1854, Justice Stevens dissent,

"The unending search for symmetry in the law can cause judges to forget about justice. This should be a simple case."

Symmetry in the law will tempt Courts to limit the re-view of this case to only Board issues, and not consider the overall effect that all the Claims have had on making the process a Farce on Justice.

at 1855

"...when cause and prejudice standard is inadequate to protect against fundamental miscarriages of justice, the cause and prejudice requirement must yield to the imperative of correcting a fundamentally, unjust incarceration. (Quoting Engles v. Isaac 456 U.S. 107, 135)

"That the State has decided to oppose (Parole) the grant of habeas releif in this case, ...might cause some to question whether the State (County of San Mateo) has forgotten its overriding "obligation to serve the cause of justice."  
United States v. Agurss 427 U.S. 91, 111

1 "But this Court is surely no less at fault.  
2 ... "the Court has lost sight of the basic  
3 reason why the writ of habeas corpus indisputably  
4 holds an honored position in our jurisprudence.  
5 Engle 456 U.S., at 126

6 Habeas corpus is, and has for centuries been, a  
7 "bulwark against convictions (continued  
8 incarcerations) that violate fundamental  
9 [541 U.S. 399] fairness", fundamental fairness  
10 should dictate the outcome of this unusually  
11 simple case."

12 at 1856, Justice Kennedy's dissent;

13 "The law must serve the cause of justice."

14 "[Judicial] discretion can inspire little  
15 confidence if Officials sworn to fight injustice  
16 choose to ignore it."

17 San Mateo County Officials almost literally cost  
18 Petitioner his life, and despite the obvious  
19 dangers/threats recognized by the Court, admitted  
20 to by police-officials, everyone in the County  
21 with a Fiduciary duty to intercede, failed to  
22 do so.

23 State Attorney General Office, Deputy Attorney  
24 General Morris Lenk and other's with Authority  
25 over San Mateo County, has and continues to  
26 ignore the over-all constitutional violations  
27 suffered by Petitioner.

28 Fundamental fairness should dictate the outcome of this  
unusually simple but convoluted case, in which;

"And what is clear is that the system  
FAILED him (Petitioner) ultimately,... (Rt. 1676)

And similar to Judicial-Precedent set in the Rosenkrantz's  
case, Petitioner should be released by the Court. (Exh. P.)

Respectfully Submitted,

La Merle R. Johnson, Petitioner. Dated: 8/16/06